## NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

ATLANTIC AMBULATORY ANESTHESIA : CIVIL ACTION NO. 10-6275 (MLC) ASSOCIATES, LLC,

Plaintiff,

v.

RICHARD RUSSOMANO,

Defendant.

RICHARD RUSSOMANO,

Third-party Plaintiff,

V.

RARITAN HIGH SCHOOL and MAGNACARE, :

Third-party Defendants.

OPINION

THE PLAINTIFF, Atlantic Ambulatory Anesthesia Associates, LLC ("AAA") commenced the first-party action seeking payment for medical services against the defendant, Richard Russomano, in New Jersey state court in February 2010 ("Reimbursement Action"). (Dkt. entry no. 1, Rmv. Not. at 1.) Russomano brought a thirdparty action in June 2010 seeking indemnification for the claims asserted in the Reimbursement Action against two third-party defendants, Raritan High School and Mangnacare. (Dkt. entry no. 1, Third-party Compl.) Magnacare alone removed the entire case

<sup>1</sup> The Westlaw database confirms that the Reimbursement Action was commenced in February 2010 under state court number DC-3891-10.

from state court based upon Magnacare's assertion that "[t]his matter arises out of claims by a healthcare provider for non-payment of healthcare services provided to [AAA's] patient [i.e., Russomano,] and claims for the denial of alleged group health insurance coverage", and thus "[s]ubject matter jurisdiction is . . . under 28 U.S.C. § 1331 and the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001, et seq." (Rmv. Not. at 2.)

WHETHER a third-party defendant may seek the removal of an entire case is an open question. See Bank of N.Y. v. Ukpe, No. 09-1710, 2009 WL 4895253, at \*5-6 (D.N.J. Dec. 9, 2009) (discussing same). Assuming, arguendo, that such a removal is permitted, a third-party defendant may remove an entire case only if the third-party claims are "separate and independent" from the first-party claims. Id. at \*6. Thus, if a third-party claim is "substantially derived from the same set of facts" as a firstparty claim that is no longer removable, then the third-party claim is not a separate and independent claim. Id. at \*7. Russomano's third-party indemnification claims are substantially derived from the Reimbursement Action, and thus Magnacare cannot remove them. See id. at \*1-2, \*7 (remanding entire case where first-party plaintiff brought state-court foreclosure action, defendant brought third-party claim under federal law, and thirdparty defendant removed entire case); see also Somerset Med. Ctr. v. Jewett, No. 08-5135, 2009 WL 792269, at \*4 (D.N.J. Mar. 23, 2009) (remanding entire case where plaintiff medical provider brought state-court collection action, defendant brought third-party indemnification action, and third-party defendant removed under ERISA, because (1) defendant's indemnification claim against third-party defendant arose directly from plaintiff's claim for payment, and (2) right to indemnification was dependent on judgment being awarded against defendant); Hackensack Univ.

Med. Ctr. v. Lagno, No. 06-687, 2006 WL 3246582, at \*6 (D.N.J. Nov. 3, 2006) (same). Therefore, the Court will remand the entire case. The Court will issue an appropriate order and judgment.

s/ Mary L. Cooper

MARY L. COOPER

United States District Judge

Dated: December 7, 2010